

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

DIRECT MARKETING CONCEPTS, INC., d/b/a
TODAY'S HEALTH and DIRECT
FULFILLMENT, DONALD W. BARRETT,
HEALTHY SOLUTIONS, LLC d/b/a DIRECT
BUSINESS CONCEPTS, HEALTH SOLUTIONS,
INC., ALEJANDRO GUERRERO, a/k/a ALEX
GUERRERO, MICHAEL HOWELL, GREG
GEREMESZ, TRIAD ML MARKETING, INC.,
KING MEDIA, INC., ALLEN STERN, and
ROBERT MAIHOS,

Defendants;

and

LISA STERN, STEVEN RITCHEY and BP
INTERNATIONAL, INC.,

Relief Defendants.

C. A. No. 04-CV-11136-GAO

**UNOPPOSED MOTION FOR LEAVE TO MAKE PAYMENTS COVERED BY ASSET
DISSIPATION RESTRICTIONS IN THE PRELIMINARY INJUNCTION**

Defendants ITV Direct, Inc. ("ITV"), Direct Marketing Concepts, Inc. ("DMC"), Donald Barrett and Robert Maihos (ITV, DMC, Donald Barrett and Robert Maihos are collectively referred to herein as the "ITV Parties"), by their counsel, hereby request leave from the preliminary injunction dated June 23, 2004 (the "Injunction"). As grounds for this Motion, the ITV Parties state as follows:

1. The ITV Parties have been involved in two related parallel proceedings (*ITV Direct, Inc. v. Healthy Solutions, LLC et al.*, C.A. No. 04-10421-JLT (the "ITV Action") and *Cappseals, Inc. v. Direct Marketing Concepts, Inc.*, et al., C.A. No. 05-11907-JLT (the "DMC Action") (The ITV Action and the DMC Action are collectively referred to herein as the "Actions"). These lawsuits primarily concern a debt owed by the ITV Parties' for their receipt and use of certain products that they later sold in the ordinary course of their business. These products were manufactured by Cappseals, Inc., who obtained a judgment against ITV Direct in the ITV Action in August, 2005.
2. While the ITV Parties disputed certain aspects of the debt owed to Cappseals, the ITV Parties and Cappseals have agreed on a settlement of their dispute that resolves both of the Actions and will involve a payment by the ITV Parties to Cappseals.
3. The ITV Parties believe that payment of the amounts owed to Cappseals are actual and necessary business expenses, and, accordingly, such payment does not violate the Injunction. However, the staff of the Federal Trade Commission ("FTC") believes that payment by the ITV Parties pursuant to the Settlement Agreement is covered by sections VIII and IX of the Injunction and thus requires this Court's approval. Accordingly, in an abundance of caution, the ITV Parties have filed this motion for leave from Sections VIII and IX of the Injunction to the extent necessary to pay the debt to Cappseals.

4. The ITV Parties have consulted with the staff of the FTC, which has reviewed the relevant settlement agreement between the ITV Parties and Cappseals and a draft of the present motion. The FTC has agreed not to oppose this motion.

WHEREFORE, the ITV Parties respectfully request that this Court grant them Leave from Sections VIII and IX of the Injunction so that they can complete their settlement with Cappseals.

DIRECT MARKETING CONCEPTS, INC, ITV
DIRECT, INC., DONALD W. BARRETT and
ROBERT MAIHOS

By their attorneys,

/s/ Christopher Robertson

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Dated: January 26, 2007